

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROILAND FERNANDEZ-MEDINA,

Plaintiff,

v.

RYAN OLIVAREZ, *et al.*,

Defendants.

CASE NO. 3:20-cv-05703-RAJ-JRC

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

The Court, having reviewed the report and recommendation of Magistrate Judge J. Richard Creatura, objections to the report and recommendation, if any, and the remaining record, does hereby find and ORDER:

- (1) The Court **adopts** the report and recommendation.
- (2) Defendants' motion to dismiss (Dkt. 41) is **granted in part and denied in part**.
- (3) Plaintiff's false arrest claim is **dismissed without leave to amend**.
- (4) Plaintiff's substantive due process claim is **dismissed without leave to amend**.
- (5) Plaintiff's equal protection claim is **dismissed with leave to amend**.
- (6) Plaintiff's claim under article I, section 7 of the Washington State Constitution, and any claim for a violation of the common law right to privacy, is **dismissed without leave to amend**.
- (7) The Sheriff's Department is **dismissed as a defendant**.

1 (8) Plaintiff is **instructed as follows** with respect to the filing of a second amended
2 complaint:

3 (a) Plaintiff may, **if he wishes**, file a second amended complaint in which he
4 attempts to state an equal protection claim or a claim that Pierce County
5 had a policy or custom that caused defendants' alleged use of excessive
6 force on him. The second amended complaint **must be filed** on or before

7 **February 14, 2022.**

8 (b) The second amended complaint, if any, **must be filed** on this District's §
9 1983 form, legibly written or retyped in its entirety, and filled out
10 completely. Furthermore, the second amended complaint **must contain**
11 case number 3:20-cv-05703-RAJ-JRC.

12 (c) The second amended complaint, if any, will act as a complete substitute
13 for the complaint; the Court will address only the claims alleged in it. The
14 Court recognizes that plaintiff has sufficiently pleaded an excessive force
15 claim. However, because the second amended complaint will act as a
16 complete substitute for the amended complaint, **plaintiff must replead**
17 **this claim and the facts supporting it in the second amended**
18 **complaint. If he does not, the Court will not permit him to proceed on**
19 **this claim.** Likewise, plaintiff must plead any equal protection claim,
20 and/or any claim that Pierce County had a policy or custom that caused
21 defendants' alleged use of excessive force, he wishes to assert **and** the
22 facts supporting it/them in the second amended complaint.

23 (d) Plaintiff **must not** unjustifiably expand the scope of the case by alleging
24 new unrelated claims or parties in the second amended complaint. *George*

1 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Indeed, plaintiff may **only**
 2 assert an equal protection claim and/or a claim that Pierce County had a
 3 policy or custom and that caused defendants' alleged use of excessive
 4 force, along with his excessive force claim, in the second amended
 5 complaint.

6 (e) If plaintiff **does not wish** to file a second amended complaint, and would
 7 prefer to proceed on only his excessive force claim, he **must file a notice**
 8 with the Court so stating. This notice **must be received by February 14,**
 9 **2022.** If, by **February 14, 2022**, plaintiff has not filed this notice or a
 10 second amended complaint, the case **shall proceed only on plaintiff's**
 11 **excessive force claim.**

12 (f) If Plaintiff fails to comply with this order, the Court will take any
 13 appropriate action, **including dismissal of the case.**

14 (9) The Clerk is directed to **send** plaintiff the appropriate forms for filing a § 1983
 15 action and copies of this order and the Magistrate Judge's report and recommendation.

16 (10) The Clerk is further directed to **lift** the stay in this case and **send** copies of this
 17 order to counsel for defendants and the Hon. J. Richard Creatura.

18 **DATED** this 7th day of February, 2022.

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21 The Honorable Richard A. Jones
 22 United States District Judge
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